

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 3468 OF 2002
IN
SUIT NO. 3977 OF 2002

Suresh G. Agarwal .. Plaintiff
versus
Ramesh G. Agarwal & ors. .. Defendants

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Mr.R.C. Shah i.b P.G. Bhatia for the plaintiff.
Ms.Neela Mahato for the defendant nos.3 and 4.
Mr.S.R. Mishta for the defendant nos.2 and 5.
Mr.K.R. Bulchandani i/b M/s.Kamal & Co. for the
defendant no.1.

CORAM : D.G. KARNIK, J.

DATED : 10th February 2005.

P.C.:

1. Heard the learned counsel for the parties.

2. This motion is taken out in an administration suit filed by the plaintiff for administration of the estate of late Gopilal Agarwal. The defendant nos.1 to 4 are other children of the deceased Gopilal and defendant no.5 is the wife of defendant no.2. The defendant no.2 claims that the deceased Gopilal had left behind him a last will bequeathing his property to the defendant no.2 who claims to be an executor and has filed a Testamentary petition no.319 of 2004 which is still pending. The will is not yet proved. In view of this, the defendant nos.2 and 5 state that the defendant nos.2 and 5 would not sell, alienate otherwise dispose of the assets of the deceased till the will is proved. The statement is recorded and accepted. In view of this, it is not necessary to pass any further order than to confirm the order of ad-interim injunction passed on 20th December 2002.

3. As regards the prayer for receiver, the plaintiff has not made out a case for appointment of a receiver. The plaintiff does not have a present right to dispossess the defendants which is a condition precedent under Order 40 Rule 1(2) of the Code of Civil Procedure. No receiver can be

appointed at this stage. Hence, prayer for appointment of a receiver is rejected.

4. Order passed by this Court on 20th December 2002 is confirmed till the disposal of the suit.

5. Motion disposed of.

D.G. KARNIK, J